

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

JAMES SIMS,

Debtor.

CROSSROADS DINOR, LTD.,

Movant,

v.

**JAMES SIMS, VINCENT PETRAGLIA,
CHRISTIAN SIMS, ROBERT WALSH, AND
JAMES MCNAMARA,**

Respondent.

Bankruptcy No. 09-21812-TPA

Chapter 11

Document No.

Related to Docs. No. 65

**Hearing Date and Time:
June 11, 2009 at 10:00 a.m.**

RESPONSE TO MOTION TO JOIN IN RULE 2004 DEPOSITIONS

AND NOW comes James Sims, by and through his Counsel, Robert O Lampl, John P. Lacher, and Elsie R. Lampl, and files the following **RESPONSE TO MOTION TO JOIN IN RULE 2004 DEPOSITIONS**, as follows:

1. The averments of Motion Paragraph 1 are conclusions of law to which no response is required. To the extent that a response is required, said averments are denied and strict proof thereof is demanded.
2. The averments of Motion Paragraph 2 are conclusions of law to which no response is required. To the extent that a response is required, said averments are denied and strict proof thereof is demanded.

3. The averments of Motion Paragraph 3 are conclusions of law to which no response is required. To the extent that a response is required, said averments are denied and strict proof thereof is demanded.

4. The averments of Motion Paragraph 4 are conclusions of law to which no response is required. To the extent that a response is required, said averments are denied and strict proof thereof is demanded.

5. The averments of Motion Paragraph 5 are admitted.

6. The averments of Motion Paragraph 6 are beyond the knowledge and belief of the Debtor. As such, said averments are denied and strict proof thereof is demanded.

7. The averments of Motion Paragraph 7 are admitted in part and denied in part. It is admitted that Movant filed a proof of claim of \$457,037.70 in which Movant alleges it is secured. Any and all averments pertaining to said claim are denied in that it speaks for itself.

8. The averments of Motion Paragraph 8 are admitted.

9. The averments of Motion Paragraph 8 are denied and strict proof thereof is demanded. By way of further answer, pursuant to W.D.Pa.Bankr.LR 2004 Movant has a duty to confer with Debtor and Debtor's counsel before noticing of a proposed examination. Movant has made absolutely no attempt to confer. A "failure by the movant to attempt to confer shall be grounds to quash". See: W.D.Pa.Bankr.LR 2004

It is further averred that Movant's request of the Court to enter an Order permitting him to participate in 2004 examinations is improper and misguided. Movant's request should be quashed and Movant should proceed under the requirements and

guidelines of the local rules. There is nothing within Movant's request that avers or attempts to explain a reason why Movant has not performed his duties under Rule 2004 of conferring with counsel and parties before asking for 2004 examinations. As such, the Motion at issue is misplaced and should be dismissed.

WHEREFORE, Debtor respectfully requests that this Honorable Court deny Crossroads Dinor LTD's Motion to Join in Rule 2004 Depositions.

Respectfully Submitted

/s/ Robert O Lampl
ROBERT O LAMPL
PA I.D. #19809
JOHN P. LACHER
PA I.D. #62297
ELSIE R. LAMPL
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CERTIFICATE OF SERVICE

I, Robert O Lampl, John P. Lacher and Elsie R. Lampl, hereby certify that on the 9th day of June, 2009, I served a true and correct copy of the attached **RESPONSE TO MOTION TO JOIN IN RULE 2004 DEPOSITIONS** upon the following (*via First-Class U.S. Mail, Facsimile, and/or Email*):

Office of the U.S. Trustee
970 Liberty Center
1001 Liberty Avenue
Pittsburgh, PA 15222

Susan Fuhrer Reiter
MacDonald, Illig, Jones, & Britton
100 State Street
Suite 700
Erie, PA 16507

The Honorable Thomas P. Agresti
5430 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(via Hand-Delivery)

/s/ Robert O Lampl
ROBERT O LAMPL
PA I.D. #19809
JOHN P. LACHER
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